



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

REED SMITH LLP
3110 FAIRVIEW PARK DRIVE, SUITE 1400
FALLS CHURCH, VA 22042

COPY MAILED

JAN 30 2009

OFFICE OF PETITIONS

In re Application of
Yoshiko Tamaki, et al.
Application No. 09/897,929
Filed: July 5, 2001
Attorney Docket No. ASAM.0011

:
:
:
:
:

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed October 8, 2008, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. ' 704.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of March 26, 2008. A Notice of Abandonment was subsequently mailed on November 10, 2008.

A grantable petition under 37 CFR 1.137(b)¹ must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D). The petition lacks item (1).

In this regard the proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and

¹ As amended effective December 1, 1997. See Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53194-95 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 119-20 (October 21, 1997).

submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2).

While the petition includes a Request for Continued Examination (RCE), it does not include a proper submission under 37 CFR 1.114. Therefore, the petition cannot be granted at this time.

It is also noted that a Request to Suspend Prosecution was filed in conjunction with the RCE. However, petitioner should note that 37 CFR 1.103(c) states that “[a]ny request for suspension of action under this paragraph must be filed with the request for continued examination under § 1.114, ...” In this case, the RCE does not include a submission in compliance with 37 CFR 1.114.

Further correspondence with respect to this matter should be delivered through one of the following mediums:

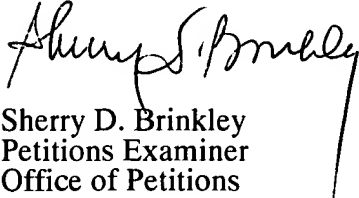
By mail: Mail Stop PETITIONS
 Commissioner for Patents
 Post Office Box 1450
 Alexandria, VA 22313-1450

By hand: Customer Service Window
 Mail Stop Petitions
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

By fax: (571) 273-8300
 ATTN: Office of Petitions

By Internet: EFS-Web²

Any questions concerning this matter may be directed to the undersigned at (571) 272-3204.


Sherry D. Brinkley
Petitions Examiner
Office of Petitions

² www.uspto.gov/ebs/efs_help.html (for help using EFS-Web call the Patent Electronic Business Center at (866) 217-9197)